

121 FERC ¶ 61,248
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Encinal Gathering, Ltd.

Docket No. CP07-418-000

ORDER ISSUING PRESIDENTIAL PERMIT AND NGA SECTION 3
AUTHORIZATION

(Issued December 10, 2007)

1. On July 2, 2007, Encinal Gathering, Ltd. (Encinal) filed an application in Docket No. CP07-418-000 requesting authorization under section 3 of the Natural Gas Act (NGA) to site, construct, and operate certain natural gas pipeline and metering facilities at a point on the International Boundary between the United States (U.S.) and the Republic of Mexico (Mexico) in Webb County, Texas and Coahuila, Mexico (Border Crossing Facilities) and for issuance of a Presidential Permit authorizing Encinal to construct, operate, maintain, and connect these same Border Crossing Facilities to its existing gathering facilities in Webb County. The Border Crossing Facilities would be used to import natural gas from Mexico to the U.S. and to export natural gas from the U.S. to Mexico.¹

2. For the reasons discussed below, we will issue Encinal a Presidential Permit and the NGA section 3 authorizations, subject to certain conditions, to site, construct, operate and maintain its proposed pipeline facilities between the U.S. and Mexico because granting these authorizations are not inconsistent with the public interest.

I. Background and Proposal

3. Encinal is a Texas limited partnership engaged in the production and gathering of natural gas and is an indirect subsidiary of Lewis Energy Group, L.P. (LEG), a privately-owned company engaged in the production, gathering, and treatment of natural gas in South Texas. Encinal conducts production and gathering operations in Webb, LaSalle, and Dimmit counties in Texas. The wells in this area produce sweet gas in the Olmos

¹ Encinal's proposed project, including the non-jurisdictional portions, is called the Petrolero Project, while the phrase Border Crossing Facilities refers only to the portion of the project that will cross the border.

Formation and sour gas in the Edwards Formation. Encinal also owns and operates the Big Reef Gathering System, which connects Encinal's sour gas production to the Big Reef Treating Facility, a sour gas treatment facility.

4. Another LEG subsidiary, Lewis Energy Mexico, S, de R.L. de C.V. (LEM), engages in exploration and production activities in Mexico, across the International Boundary from Encinal's operations. Since July of 2005, LEM has drilled six wells in the Olmos Block, a tract of land comprising approximately 80,000 acres in Coahuila, Mexico, one of which lies less than one mile from the U.S. border. LEM has executed a Contrato de Servicios Múltiples (Multiple Services Contract) with PEMEX Exploracion Produccion (PEMEX Exploracion) that entitles LEM to perform exploration and production activities in the Olmos Block. The gas produced in the Olmos Block under the Multiple Services Contract belongs to PEMEX Exploracion, which makes delivery of the gas to PEMEX Gas y Petroquímica Básica at the border of the block. LEM and Encinal plan to drill as many as sixty more wells in this general vicinity, both in Mexico and the U.S., respectively, over the next few years, according to Encinal. Currently, there is no pipeline infrastructure in Mexico for approximately sixty miles in any direction beyond the Olmos block, thus stranding all of the gas produced there.

5. Therefore, Encinal states, LEM plans to construct gathering facilities in Mexico that would interconnect with the facilities Encinal proposes in this proceeding to provide an outlet for the stranded gas.

II. Summary of the Proposed Project

6. Encinal proposes to construct a 683-foot extension of its existing natural gas gathering system to interconnect at the border between the U.S. and Mexico with new gathering facilities being constructed by LEM in Mexico. This would enable Encinal to connect the stranded production from the Olmos Block in Mexico through the Border Crossing Facilities to its existing Big Reef Gathering System.

7. The proposed Border Crossing Facilities comprise two twelve-inch-diameter gathering lines, one for sour gas and one for sweet gas.² These pipeline sections would be horizontally directionally drilled under the Rio Grand River and would be a total of 1,435 feet long, 683 feet of which would be located in the U.S. From the International Boundary at the center of the Rio Grande River, the Border Crossing Facilities would extend eastward to pigging facilities at Encinal's existing Galvan "H" No. 2 well site in

² Sour gas refers to gas that contains chemical impurities, most notably hydrogen sulfide (H₂S) or other sulfur compounds, while sweet gas is free of such impurities when produced.

Webb County, Texas, the westward terminus of Encinal's gathering system. Encinal states that the design capacity of each segment of pipeline will be approximately thirty million cubic feet per day (MMcf/d) and will cost approximately \$250,000 to construct.³

8. The non-jurisdictional gathering facilities would consist of two parallel eight-inch-diameter pipelines extending approximately 1.2 miles from the eastern terminus of the Border Crossing Facilities eastward to Encinal's existing Galvan Tank Battery and fall under the jurisdiction of the Texas Railroad Commission.

9. Encinal has stated that, at present, the purpose of the proposed Border Crossing Facilities (and the additional non-jurisdictional portion of the Petrolero Project facilities) is to connect new natural gas production in Mexico to Encinal's gathering system for ultimate consumption in the San Antonio, Texas area. However, should future market conditions warrant, Encinal wishes to have the flexibility to reverse the flow of gas through the Border Crossing Facilities to enable gas produced and gathered via the Big Reef Gathering System to flow south into Mexico for processing and ultimate consumption in Mexico. For this reason, Encinal has requested that the Commission authorize use of the Border Crossing Facilities for both the importation and the exportation of natural gas.

III. Notice and Interventions

10. Notice of Encinal's application in Docket No. CP07-418-000 was published in the *Federal Register* on July 31, 2007.⁴ A timely motion to intervene was filed by MGI Supply Ltd. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.⁵ There were no protests or comments to the application.

IV. Discussion

11. Because Encinal's Border Crossing Facilities will be used to export and import natural gas, the construction, operation and maintenance of the border crossing facilities are subject to our jurisdiction and the requirements of NGA section 3.

12. Further, pursuant to the provisions of Executive Order Nos. 10485 and 12038 of September 1, 1953, and February 3, 1978, respectively, and the Secretary of Energy's Delegation Order No. 00-004.00A, effective May 16, 2006, the Commission, subject to

³ Encinal anticipates that total volumes from this project would not exceed fifteen MMcf/d.

⁴ 72 Fed. Reg. 41,717 (July 31, 2007).

⁵ 18 C.F.R. § 385.214(c) (2007).

approval from the Secretary of State and the Secretary of Defense, is authorized to issue a Presidential Permit approving the construction and operation of the subject facilities located at the international border with Mexico.

13. On August 24, 2007, the Commission sent copies of the application and draft Presidential Permits to the Secretary of State and the Secretary of Defense for their recommendations. A reply on behalf of the Secretary of State was filed on November 23, 2007. A reply on behalf of the Secretary of Defense was filed on November 27, 2007.⁶ The replies indicate no objection to the issuance of the Presidential Permit, as described herein. The Secretary of State, however, requests that language be placed in the permit to note that plans for the proposed facilities must be presented to the International Boundary and Water Commission for review and approval and we have done so. Additionally, the Secretary of Defense notes that if a facility will be sited, constructed, expanded or operated on land or interest in land owned or controlled by a military department, including Army civil works activities, then an appropriate real estate use agreement must be obtained as a separate action with the applicable departments. We note that Encinal's facilities are not proposed to be located on land currently owned or controlled by a military department.

14. Encinal asserts that the proposal will benefit consumers by increasing gas supply competition within the U.S., which in turn will reduce natural gas prices to consumers and stimulate economic growth. Additionally, it argues that reduced prices would stimulate demand for natural gas in the industrial sector, which would aid in the attainment of EPA clean air standards in the San Antonio, Texas area. Further, Encinal argues that its proposal to reverse the flow of natural gas through the facilities, if market conditions warrant, promotes the goals stated in the North American Free Trade Agreement (NAFTA) that relate to the cooperative economic development in the U.S. and Mexico. Finally, Encinal contends that the proposed project will not impair its ability to render gathering services in the U.S. at reasonable rates to its existing customers.

15. Based on our review of the record, and the absence of any objection from the Secretaries of State and Defense, we find that Encinal's proposed project would facilitate

⁶ Executive Order No. 10485 requires that the Commission obtain the favorable recommendation of the Secretaries of State and Defense before issuing a Presidential Permit. 18 Fed. Reg. 5,397 (Sept. 9, 1953), *as amended by* Executive Order 12038, 43 Fed. Reg. 4,957 (Feb. 7, 1978).

trade between the U.S. and Mexico thereby promoting the objectives of the Energy Policy Act of 1992⁷ and is not inconsistent with the public interest. Accordingly, we will grant Encinal's request for NGA section 3 authorization and a Presidential Permit.⁸

16. Encinal states that it will obtain the required authorization from the Department of Energy Office of Fossil Energy (DOE/FE) prior to initiating the importation or exportation of natural gas. However, in accordance with section 153.6 of our regulations, we will require Encinal to file an affidavit stating that all appropriate DOE/FE authorizations have been obtained prior to initiating construction of the Border Crossing Facilities.⁹

V. Environmental Matters

17. On November 1, 2007, we issued an environmental assessment (EA) that addresses geology, soils, water resources, wetlands, vegetation, wildlife, endangered and threatened species, land use, cultural resources, air and noise quality, and alternatives of the Petrolero Project (including the non-jurisdictional facilities). Based on the discussion in the EA, we conclude that if the Petrolero Project is constructed and operated in accordance with Encinal's application and our recommendations, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

18. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of the Presidential Permit and NGA section 3 authorization granted by this order. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.¹⁰ Encinal shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Encinal. Encinal shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

⁷ See 15 U.S.C. § 717b (2000).

⁸ See Appendix A to this order.

⁹ 18 C.F.R. § 153.6 (2007).

¹⁰ See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Comm'n*, 894 F.2d 571 (2d Cir. 1990); *Iroquois Gas Transmission System*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

19. The Commission on its own motion, received and made a part of the record all evidence, including the application (s), as supplemented, and exhibits thereto, submitted in this proceeding and upon consideration of the record,

The Commission orders:

(A) The Commission approves the requests by Encinal for an authorization under NGA section 3 and a Presidential Permit (attached as Appendix A hereto) authorizing it to site, construct, operate and maintain pipeline facilities at the border of the United States and Mexico, as described in the application and in the body of this order.

(B) Encinal shall sign and return the Testimony of Acceptance of all the provisions, conditions and requirements of the Presidential Permits to the Secretary of the Commission within 30 days of the issuance of this order.

(C) Prior to initiating construction of the Border Crossing Facilities, Encinal shall file an affidavit with the Secretary of the Commission stating that all appropriate DOE/FE authorizations have been obtained.

(D) Encinal shall comply with the Environmental Conditions contained in Appendix B of this order.

(E) Encinal shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Encinal. Encinal shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

APPENDIX A

**PRESIDENTIAL PERMIT
AUTHORIZING ENCINAL GATHERING, LTD.
TO SITE, CONSTRUCT, OPERATE, AND MAINTAIN FACILITIES
FOR EXPORTATION AND IMPORTATION OF NATURAL GAS
AT THE INTERNATIONAL BOUNDARY BETWEEN
THE UNITED STATES AND MEXICO
IN WEBB COUNTY, TEXAS**

**FEDERAL ENERGY REGULATORY COMMISSION
DOCKET NO. CP07-418-000**

(Issued December 10, 2007)

Encinal Gathering, Ltd., (Encinal or Permittee), a limited liability company organized and existing under the laws of the State of Texas, filed on July 12, 2007, in Docket No. CP07-418-000, an application pursuant to Executive Order Nos. 10485 and 12038 and the Secretary of Energy's Delegation Order No. 00-004.00A, requesting that the Commission issue an order under section 3 of the NGA and a Presidential Permit authorizing Permittee to site, construct, operate, and maintain certain pipeline and related facilities and the place of entry and exit for importing and exporting natural gas as described in Article 2 below at the International Boundary between the United States and Mexico in Webb County, Texas.

By letter filed November 23, 2007 the Secretary of State, and, by letter filed November 27, 2007, the Secretary of Defense, favorably recommended that the Permit be granted. The Federal Energy Regulatory Commission finds that the issuance of a Permit is appropriate and consistent with the public interest.

Pursuant to the provisions of Executive Order Nos. 10485 and 12038, dated September 3, 1953, and February 3, 1978, respectively, the Secretary of Energy's Delegation Order No. 00-004.00A, effective May 16, 2006, and the Commission's Regulations, permission is granted to Permittee to construct, operate, install, and maintain the natural gas facilities described in Article 2 below, upon the terms and conditions of the Permit.

Article 1. It is expressly agreed by the Permittee that the facilities herein described shall be subject to all provisions and requirements of this Permit. This Permit may be modified or revoked by the President of the United States or the Federal Energy Regulatory Commission and may be amended by the Federal Energy Regulatory Commission upon proper application therefore.

Article 2. The following facilities are subject to this Permit: Two parallel twelve-inch-diameter pipelines, each approximately 683 feet in length extending from the Permittee's Big Reef Gathering System and ending at the International Boundary between the United States and Mexico in Webb County, Texas.

Article 3. The natural gas facilities authorized herein, or which may subsequently be included herein by modification or amendment, may be utilized for importation or exportation of natural gas between the United States and Mexico only in the amount, at the rate, and in the manner authorized under section 3 of the Natural Gas Act. Plans for work must be presented to the International Boundary and Water Commission for review and approval.

Article 4. The operation and maintenance of the aforesaid facilities shall be subject to the inspection and approval of representatives of the United States. The Permittee shall allow officers and employees of the United States, showing proper credentials, free and unrestricted access to the land occupied by the facilities in the performance of their official duties.

Article 5. If in the future it should appear to the Secretary of the Army that any facilities or operations permitted hereunder cause unreasonable obstruction to the free navigation of any of the navigable waters of the United States, the Permittee may be required, upon notice from the Secretary of the Army, to remove or alter the same so as to render navigation through such waters free and unobstructed.

Article 6. The Permittee shall be liable for all damages occasioned to the property of others by the operation or maintenance of the facilities, and in no event shall the United States be liable therefor. The Permittee shall do everything reasonable within its power to prevent or suppress fires on or near land occupied under this Permit.

Article 7. The Permittee agrees to file with the Commission, under oath and in such detail as the Commission may require, such statements or reports with respect to the natural gas imported or exported, or the facilities described herein, as the Commission may, from time to time, request. Such information may be made available to any federal, state, or local agency requesting such information.

Article 8. Neither this Permit nor the facilities, nor any part thereof, covered by this Permit shall be voluntarily transferred in any manner, but the Permit shall continue in effect temporarily for a reasonable time in the event of the involuntary transfer of the facilities by operation of law (including transfer to receivers, trustees, or purchasers under foreclosure or judicial sale) pending the making of an application for a permanent Permit and decision thereon, provided notice is promptly given in writing to the Commission accompanied by a statement that the facilities authorized by this Permit remain

substantially the same as before the involuntary transfer. The Permittee shall maintain the facilities in a condition of repair for the efficient transportation of natural gas and shall make all necessary renewals and replacements.

Article 9. At such time that this Permit is surrendered, revoked, or otherwise terminated, the Commission shall determine which of the authorized facilities shall be removed and which shall remain in place. The Commission will specify the time within which any authorized facilities shall be removed, and the Permittee shall remove those facilities within such time and at the Permittee's expense. Upon failure of the Permittee to comply with the Commission's direction to remove any authorized facilities, the Commission may direct that possession of the same be taken and the facilities be removed at the Permittee's expense, and the Permittee shall have no claim for damages by reason of such possession or removal.

Article 10. The Permittee agrees that when, in the opinion of the President of the United States, evidenced by a written order addressed to it as holder of this Permit, the safety of the United States demands it, the United States shall have the right to enter upon and take possession of any of the facilities, or parts thereof, maintained or operated under this Permit, and all contracts covering the transportation or sale of natural gas by means of said facilities, to retain possession, management, and control thereof for such length of time as may appear to the President to be necessary to accomplish said purposes, and then to restore possession and control to the Permittee; and in the event that the United States shall exercise such right it shall pay the Permittee just and fair compensation for the use of said facilities upon the basis of a reasonable profit in time of peace, and the cost of restoring said facilities to as good condition as existed at the time of taking over thereof, less the reasonable value of any improvements that may be made thereto by the United States and which are valuable and serviceable to the Permittee.

Article 11. This Permit is subject to any action which the Government of the United States may in the future deem expedient or necessary to take in case any part of the aforesaid facilities comes into the control of any foreign government.

Article 12. The Government of the United States shall be entitled to the same or similar privileges as may by law, regulation, agreement, or otherwise, be granted by the Permittee to any foreign government.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

IN TESTIMONY OF ACCEPTANCE of all the provisions, conditions and requirements of this Permit, the Permittee this day of _____ has caused its named to be signed by _____, pursuant to a resolution of its Board of Directors duly adopted on the __ day of _____, _____, a certified copy of the record of which is attached hereto.

Encinal Gathering, Ltd.

By _____

(Attest)

Executed in triplicate

APPENDIX B

Environmental Conditions

1. Encinal shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the environmental assessment (EA), unless modified by this Order. Encinal must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of this Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, Encinal shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors, and contractor personnel will be informed of the environmental inspector's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA. **As soon as they are available, and before the start of construction**, Encinal shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by this Order. All requests for modifications of environmental conditions of this Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

5. Encinal shall file updated status reports prepared by the environmental inspector with the Secretary on a **biweekly** basis **until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
 - a. the current construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - b. a listing of all problems encountered and each instance of noncompliance observed by the environmental inspector during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - c. corrective actions implemented in response to all instances of noncompliance, and their cost;
 - d. the effectiveness of all corrective actions implemented;
 - e. a description of any landowner/resident complaints which may relate to compliance with the requirements of this Order, and the measures taken to satisfy their concerns; and
 - f. copies of any correspondence received by Encinal from other federal, state or local permitting agencies concerning instances of noncompliance, and Encinal's response.
6. **Prior to construction**, Encinal shall file a site-specific horizontal direction drill (HDD) contingency plan with the Secretary, for review and written approval. The plan shall include:
 - a. the results of geotechnical feasibility investigations;
 - b. a contingency plan for crossing the waterbody in the event a directional drill is unsuccessful;
 - c. a description of how an inadvertent release of drilling mud would be contained and cleaned up; and
 - d. a description of how an abandoned drill hole would be sealed, if necessary.
7. **Prior to construction**, Encinal shall complete consultation with the Texas parks and Wildlife Department (TPWD) regarding potential project impacts on state listed species, and shall file with the Secretary copies of all correspondence and responses to any TPWD recommendations.